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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,653	04/26/2001	Raymond Floyd Babcock	ROC9-2000-0295-US1	9684
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MARTIN & ASSOCIATES, LLC P O BOX 548 CARTHAGE, MO 64836-0548				
			EXAMINER ESTREMSKY, GARY WAYNE	
			ART UNIT 3676	PAPER NUMBER

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/843,653

Applicant(s)BABCOCK ET AL. *gt***Examiner**

Gary Estremsky

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 19 is objected to because of the following informalities: "coupled" should be replaced with –thereby couple—to correct usage/grammar. Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,871,629 to Bunyea.

Bunyea '629 teaches Applicant's claim limitations including : a "housing" – including 34, comprising "first and second rails" – part 64 has "first and second rails" (96,96) as shown in Fig 9, that are in the interior of the housing" – 34 as shown in Fig 1.

Alternatively, the structure used to guide latching action/parts including partitions 80 as shown in fig 3 for example and described in written description read on limitation of "rails". Both/either interpretations of the structure of the reference anticipates broad limitation. The law of anticipation requires that a distinction be made between the

invention described or taught and the invention claimed. It does not require that the reference "teach" what the subject patent teaches. Assuming that a reference is properly "prior art," it is only necessary that the claims under consideration "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or "fully met" by it. *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 789.

Bunyea '629 also teaches : an "end stop" – lower portion of housing (as shown in Fig 5) bracing part 58, a "battery compartment" – central opening for receiving 44,72,74 as shown on the face of the patent, a "battery latch" including 58, "protruding member" – portion(s) of 58 that actually engage and hold battery pack, a "slide button" – 66, at least one "battery pack retainer recess" – cross-section of recess space including range of movement of latch portions of spring 58 where present limitation does not define any particular structure that can be relied upon to patentably distinguish from the arrangement of the prior art, an "enclosure" – including 44,72,74, at least one "extending portion that is configured to go in the at least one battery pack retainer recess of the housing when the battery pack is installed in the housing" – including 76, "portion of the enclosure including at least one recess" – portion receiving 78 as shown on the face of the patent.

As regards claims 17 and 18, one of ordinary skill in the art would recognize that intended use of the structure of the prior art inherently anticipates broadly-recited method steps of the claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,567,545 to Murakami in view of U.S. Pat. No. 4,791,756 to Simpson.

Murakami '545 teaches limitations including : a "body portion" - 13, "at least one resilient spring element" - the legs projecting from either side of part 13, "at least one protruding member" - 13a,

As regards claim , part 13a extends into a recess in a battery compartment as shown in Fig 6 for example.

As regards claim , part 12 reads on "housing", "first and second rails in the interior of the housing" reads on rail structure illustrated adjacent parts 12a (near opening for part 13a) as shown on the face of the patent. The housing's back wall opposite the housing's opening for part 13a reads on limitation of "end stop", functioning as a support, or "end stop" for the latch's integral spring arms, a "battery compartment" – cavity portions defined by 12,1 as shown in Fig 6, an "elongated slot" – opening for part 13.

Murakami '545 teaches the claimed invention except for a removably attached slide button. However, it is well known in the art to attach slide buttons to the latch body using a push-in snap connection including an "opening" 96 in the latch, at least one

"retaining portion" (107) on the button (102) for engagement through the housing's (42) "elongated slot" (62) as shown by Simpson '756 for example. It would have been an obvious design choice or engineering expedient to manufacture the latch of Murakami '545 with a slide button made separately and snapped into engagement with the latch body as taught by Simpson '756 in order for the slide button to aid in retention of the parts in their assembled position and/or to provide a slide cover for the slot, both attributes of the separately-attached button being well known to those of ordinary skill in the art. One of ordinary skill in the art would have more than a reasonable expectation of success since the proposed modification would not otherwise affect the function of the disclosed latch device. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive. Applicant has not argued that the claimed invention includes any particular limitation not taught by the prior art and has not pointed out how the claims could be interpreted as to not be anticipated by the prior art. See MPEP 714.02, 714.04, 706.02(b).

While the prior art is in the same field of the invention and explicitly illustrates and describes a structurally-similar device, it is acknowledged that the stated rejection did not specifically point out how some of claims 16-19's limitations were interpreted as regards correspondence with similar structures of the prior art. However, it is noted that

analogous limitations were explicitly treated in grounds of rejection of other claims, now cancelled. Since those claims' limitations read on the same disclosed invention as claims 16-19 's limitations, the Office Action did describe how parts of the prior art were relied upon in the grounds for rejection.

Assuming there is an error in an Office Action or some point in a grounds of rejection that is not clear to Applicant, it is Applicant's responsibility under the policy of *compact prosecution* to contact the Office in a timely manner as set forth in MPEP 710.06 to correct or clarify. Otherwise, Applicant's arguments relating to adequacy of a "prima facie case of anticipation" are noted but Applicant does not cite or rely upon any particular authority or factual basis for support of those arguments. MPEP 707.07(d) outlines the language required in grounds of rejection.

Regardless, it's noted that present grounds of rejection of claim 16 includes an interpretation of the reference's structure distinct from what might reasonably have been inferred from previous rejection of claim 6 for example. In view of the new grounds of rejection, this Office Action is not made Final but Applicant is reminded that the policy of *compact prosecution* is a responsibility shared by the Office and Applicant as a service to the public.

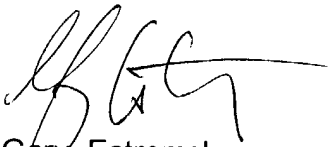
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Estremsky
Primary Examiner
Art Unit 3676